

Department of Permits and Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Baltimore County, Maryland

In the Matter of

Civil Citation No. 65283

Timothy Norris Harvey Sr.

4538 Mount Zion Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on November 17, 2009 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 1A01.1, 1A01.2B91, 1A01.3B4, failure to maintain 1 principal dwelling on a RC 2 residential property known as 4538 Mount Zion Road, 21155.

On October 29, 2009, pursuant to Baltimore County Code §3-6-205, Inspector David Kirby issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1<sup>st</sup> class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$2,500.00 (two thousand five hundred dollars).

The following persons appeared for the Hearing and testified: Timothy Norris Harvey, Respondent represented by Elwood E. Swam, Esquire, Joe Beal, Complainant and, David Kirby, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. A Correction Notice was issued on August 5, 2009 for violation of zoning regulations, only one principal dwelling allowed on RC 2 zoned lot – converted barn into dwelling not allowed. This Citation was issued on October 29, 2009.

B. Inspector David Kirby testified that he received a complaint that a barn on this property was improperly converted into two apartments without required permits. The property is about 9 acres in size. There is a main house. There are various other buildings. One of the other buildings is also being used as a residence, with two apartments. One apartment is occupied by Respondent's daughter.

C. Respondent's attorney, Mr. Elwood Swam, asked Inspector Kirby if the additional building was a "tenant house" and if that use was permitted by zoning regulations as of right. Inspector Kirby responded that the tenant house is only allowed on a working farm.

D. Mr. Joe Beal is a neighbor of Respondent and filed the complaint. He testified that Inspector Kirby's testimony was correct. He testified that several different tenants have lived in the accessory building for about seven years. Mr. Beal had to give Respondent permission to run electric service to the building. He further testified that he knew the residential conversion was illegal but chose not to complain until now.

E. Attorney Swam stated that the Citation should be dismissed because Respondent is permitted to have a principal dwelling and is also permitted as a matter of right to have a tenant house. He noted that all words in a statute or regulation must be given meaning and force, and provided Maryland court cases affirming this principle.

F. Photographs in the file show multiple buildings on Respondent's property including a large two-story building that appears to be recently built, with cream colored siding and residential doors, and a residential mailbox next to one door. Cars are parked next to the building and a small grill and a residential garbage can are under and adjacent to the steps leading to one door. A television satellite dish is visible on the roof. The evidence clearly indicates that this building is used for residential purposes, and that the residents are tenants of the Respondent. Respondent has not contested these facts.

G. The property is zoned Resource Conservation (R.C.)-2 (Agricultural) Zone. County zoning regulations state in part that the restrictions placed on the land zoned R.C. 2 are designed to protect productive agricultural land by preventing incompatible forms and degrees of urban uses. BCZR 1A01.1. Uses permitted as of right include one-family detached dwellings, BCZR 1A01.2, and only permit one principal dwelling on any lot. BCZR 1A01.3. A two-family dwelling is not permitted. Construction of a second dwelling requires subdividing into two lots. BCZR 1A01.3.

H. Respondent's attorney asserts that the structure in question qualifies as a "tenant house" that is permitted as of right under BCZR 1A01.2. He correctly asserts that the term "tenant house" is not defined in the zoning regulations. However, the term also appears in the Baltimore County Code, where it is clearly used to describe a dwelling on a farm used by farm workers and is clearly distinguished from a general "residential accessory structure." See Baltimore County Code Section 32-4-106. Respondent's property is not a farm, and in any event there is no evidence indicating that the residents of this accessory structure are farm workers.

I. It may be possible for Respondent to obtain a zoning variance or to subdivide his property to obtain required permits to convert an accessory structure into a residence and/or into two dwelling units. Because compliance is the goal of code enforcement, and because it does not appear that the illegal use is having significant negative impact on the neighborhood except for violating the established principle of preventing incompatible forms and degrees of urban uses, the civil penalty will be rescinded if Respondent corrects the zoning violation within the time provided below either by ceasing residential use or by obtaining required permits.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$1,000.00 (one thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be RESCINDED and reduced to zero dollars if the Respondent ceases the residential use of the accessory structure by February 1, 2010.

IT IS FURTHER ORDERED that the civil penalty will be RESCINDED and reduced to zero dollars if Respondent applies for necessary permits and variances for use and occupancy of the accessory structure by February 1, 2010 AND either obtains required permits or ceases residential use of the structure by June 1, 2010.

IT IS FURTHER ORDERED that after February 1, 2010, Respondent will be subject to additional Citation if Respondent has not either ceased residential use or applied for necessary permits.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 30<sup>th</sup> day of November 2009.

Signed: ORIGINAL SIGNED  
Margaret Z. Ferguson  
Baltimore County Hearing Officer

**NOTICE TO RESPONDENT:** The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.